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ABSTRACT

This paper, by a teacher of migrants, summarizes various farm labor laws and child labor laws pertaining to migrant and seasonal workers. The Migrant and Seasonal Agricultural Worker Protection Act of 1983 provides workers with assurances about pay, hours, and working conditions, including safety and health. This legislation permits anyone aggrieved by a violation of any provision by a farm labor contractor to file suit in any Federal District Court having jurisdiction over the parties. Migrant agricultural workers injured at work may sue their employer for damages under federal laws even though they already have received benefits under state law. The Department of Agriculture has reported that violations of existing child-labor laws are more flagrant among farm operators than any other employer category. Field investigators found that half of the 250,000 children of migrant parents were 4 years behind in scholastic achievement, and many failed to complete elementary school. Children are permitted to work in agriculture outside of regular school hours, if employed by parents on the home farms. Children are also permitted to work if they are between 12 and 14 years of age and employed within 25 miles of their permanent homes with written consent of their parents. New Jersey established a Migrant Labor Board to coordinate the responsibilities of agencies concerned with the work force in highly agricultural states. Several Kansas laws are cited that regulate hours children can work, provisions for work permits, and the responsibilities of the schools in the provision of such permits. Under Kansas law, many services provided by children are not considered employment. (KS)

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WAGE AND HOUR FARM LABOR LAWS

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Wage and Hour Farm Labor Laws

The Migrant and Seasonal Agricultural Worker Protection Act (MSAP) was passed in 1983 and is the only major labor law that specifically deals with agricultural equipment. The act was designed to provide migrant and seasonal farm workers with assurances about pay, hours and working conditions, including safety and health.

The law contains several major requirements for agricultural employers. Farm labor contractors must provide information to their workers on wages, hours, other working conditions, and housing. Farm labor contractors must make and preserve payroll records. They must also provide to each employee a written statement of earnings and deductions.

Each farm labor contractor that employs any migrant or seasonal worker must make the following records for each employee and preserve them for three years:

- *Basis on which wages are paid
- *Number of hours worked
- *Total earnings
- *Specific sums withheld and
- *Net pay.

Workers must be paid every two weeks or semimonthly. Each employee must be provided with an itemized written statement of the information listed above for each pay period.

Violations of MSPA carry both criminal and administrative sanctions. MSPA also permits people to bring legal action against alleged violators.

The MSPA permits anyone aggrieved by a violation of any provision by a farm labor contractor to file suit in any Federal District Court having jurisdiction over the parties. The suits may be filed regardless of the amount in controversy or regardless of the citizenship of the parties. The Court may appoint an attorney for the complainant. Finally, the Court may award up to $500 per plaintiff per violation.

Migrant agricultural workers injured at work may sue their employer for damages under Federal laws even though they already have received benefits under State law, which the Supreme Court ruled in Adams Fruit Co. vs. Barrett. In reaching this conclusion, the Court

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rejected the argument that the Federal MSPA allows States to limit farm workers' remedies for on-the-job injuries to remedies that are provided under State Workers' Compensation laws.

The farm workers in Adams Fruit had been injured in a traffic accident that occurred while their employer was driving them to work. Although the workers filed for and received Florida's Workers' Compensation benefits, they also filed suit under the MSPA, which allows workers to recover their actual damages.

In contending that remedies should not be available to the farm workers under the Federal law, the employer presented two arguments. First, it argued that the Court should give effect to Florida law, which provides that its workers' compensation remedies "shall be exclusive and in place of all other liability of the employer to the employee." In the employer's view, this position is consistent with the MSPA, which is intended to "supplement" State law. The employer also argued that a provision in the Federal law waiving motor vehicle insurance requirements for employers covered by State Workers' Compensation laws is an indication that Congress intended to preclude liability under the Federal Statute in situations in which State Worker's Compensation coverage is provided.

Justice Thurgood Marshall, for a unanimous Court, rejected the employer's arguments. In his opinion, if Congress had wanted to limit Federal remedies to cases in which State Worker's Compensation coverage is inadequate, it would have included such a limitation in the enforcement provisions of the Federal law, where private lawsuits are authorized. He noted that the insurance waiver provision had been placed in the motor vehicle safety provision of the Federal law, an indication that Congress didn't intend to limit Federal remedies.

Similarly, Justice Marshall held that, in providing that the MSPA should "supplement" State law, Congress didn't intend to permit States to supplant Federal remedies.

It was because of an incident involving a sixteen-year-old girl that burned to death in a barn housing migrant farm workers in New York, that lawmakers gathered at the State Capital in New York. As the Joint Legislative Committee on Migrant Farm Labor, it

was their responsibility, by legislative resolution, to conduct committee meetings and hold public hearings on the subject of seasonal farm labor, then recommend to the State Legislature what new amendments to existing law, they thought would be necessary to improve living and working conditions, educational facilities, and school attendance of children.

In Kronvall vs. Garvey, 148 K. 802, 804, 805, 807, 84P. 2d 858 (1938), the plaintiff was operating an old tractor and plow. The plaintiff not knowing its condition, sat on one of the fenders, sagged down, causing it to come in contact with the lugs on the tractor wheel. The fender buckled and pitched the plaintiff off the tractor. He fell directly in front of the plow, which passed over him, injuring him severely. It was alleged the occupation for which the plaintiff was employed and the place where he worked was dangerous and injurious to the life, limb and health of the plaintiff. There was reasonable cause for defendants to anticipate was under the age of sixteen and his employment by defendants was in violation of the laws of Kansas.

The Department of Agriculture has reported that violations of existing child-labor laws are more flagrant among farm operators than any other employer category. It is beyond doubt that the minimal legislation which has been enacted in the various states in behalf of the migrant has been loosely enforced as to render it largely ineffectual.

Contractors should provide transportation and lodging. This is under the responsibility of the United States Department of Education, but most decisions are made at the state level.

Field investigators found that half of the 250,000 children of migrant parents are four years behind in scholastic achievement. Children are permitted to work in agriculture outside of regular school hours, if employed by parents on the home farms, or if they're between twelve and fourteen years of age and employed within twenty-five miles of their permanent homes -- with written consent of their parents. Congress amended Title I of the Elementary and Secondary Education Act to include the children of migratory workers as one of the most educationally deprived groups in the nation. Their educational development is so retarded that they often fail to complete elementary school. This retardation results from the migratory

way of life and to attend school on a regular basis. School systems can request the need for Federal assistance to improve the educational opportunities of these children.

Other bills passed by the Congress and signed into law include coverage for migratory farm workers in the President's War on Poverty program - the Economic Opportunity Act - which improvements will be made in education, child day care, sanitation, and housing.

New Jersey can be credited with many firsts in the development of regulations. It established a Migrant Labor Board, to coordinate the responsibilities of agencies concerned with the work force in highly agricultural states. Departments assembled by the Board include Agriculture, Education, Labor and Industry, and Law and Public Safety.

K.S.A. 38-603 states no child under 16 years of age shall be employed before 7 a.m., or after 10 p.m., except on any evening that doesn't precede a school day, nor more than 8 hours in any day, nor more than 40 hours in any week.

K.S.A. 38-606 states other regulations include the superintendent of schools or his/her representative, or the judge of the district court, shall issue a work permit only after he/she has examined and filed the following paper namely the school record.

The school record of such child properly filed out and signed by the principal of the school last attended, saying that the child has completed the course of study prescribed for elementary schools by the state board of education. In case the school record isn't available, then the official issuing the permit shall cause the child to be examined to determined whether or not he/she has the educational qualifications equivalent to a completion of the elementary course of study prescribed by the state board of education, and will file in the office a statement setting forth the results. A work permit may be issued to allow the child who hasn't completed the course of study provided for to work when school isn't in session in the district where the child resides.

The Migrant Student Education Record Transfer System is operated under a contract between the United States Department of Migrant Education and the Arkansas Department of Education. The education of the migrant

student is a national concern. Each state has a State Department of Migrant Education, many with county/regional offices.

K.S.A. 38-611 states it should be the duty of the State Labor Commissioner to inspect the permits and to examine children employed in factories, workshops, theaters, elevators, packing houses, and mines, as to their age and education, and to file complaints in any court. It should be the duty of the county attorney to appear and prosecute all complaints filed.

The following shall not be considered employment according to the K.S.A. 38-614:

(1) Children employed by their parents in non hazardous occupations;
(2) domestic service;
(3) casual labor around a private home;
(4) messenger work;
(5) delivering newspapers;
(6) agricultural, horticultural, livestock or dairying employments;
(7) Children employed as performers in theatrical productions.

Such exempt services shall not be performed by a child attending school during hours in which the public school is in session in the district where the child resides.

Many children drop out of school to help their parents in the fields and to help sustain the family. The only friends these children have are those in the labor camps. Students usually work in the daytime because that's when the work is available. These students know personally about crops, trips to the fields at sunrise, and discipline at long hours of work. There are ugly secrets about labor camps of the workers in the fields. Conditions in camps are terrible, much like modern day slavery. Harvesting is tough work -- from hot weather to low pay.

The migrant child belongs to all of us who depend on migrant labor to bring food to the table -- whether its processed food, seafood or fresh vegetables. We are reaping the harvest of their efforts.

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